

BEFORE THE DEPARTMENT OF JUSTICE  
BOARD OF CRIME CONTROL  
OF THE STATE OF MONTANA

In the matter of the proposed repeal of	)	NOTICE OF PUBLIC HEARING ON
Title 23, chapter 14, subchapters 4, 5, 8,	)	PROPOSED REPEAL, ADOPTION,
and 9, reflecting transfer of POST duties	)	AND AMENDMENT
to a new division; repeal of ARM	)	
23.14.207, pertaining to decision-	)	
making authority; repeal of ARM	)	
23.15.105, pertaining to payments of	)	
claims; proposed adoption of NEW	)	
RULES I through IX, establishing appeal	)	
procedures from POST decisions; and	)	
amendment of ARM 23.14.101,	)	
reflecting changes in statute	)	

TO: All Concerned Persons

1. On May 19, 2008, at 2:00 p.m., a public hearing will be held in the Conference Room of the Board of Crime Control, 3075 North Montana Avenue in Helena, Montana, to consider the proposed repeal, adoption, and amendment of the above-stated rules.

2. The Board of Crime Control will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Crime Control no later than 5:00 p.m., May 5, 2008, to advise us of the nature of the accommodation needed. Please contact Claudia Martin, Board of Crime Control Office Manager; 3075 North Montana Avenue, P.O. Box 201408, Helena, Montana 59620-1408; telephone (406) 444-3604; fax (406) 444-4722; or e-mail [clmartin@mt.gov](mailto:clmartin@mt.gov).

3. The board proposes to repeal the following rules:

23.14.401 ADMINISTRATION OF PEACE OFFICERS STANDARDS AND TRAINING, found at page 23-409 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 7-32-303, 44-4-301, MCA

23.14.402 MINIMUM STANDARDS FOR THE EMPLOYMENT OF PEACE OFFICERS, found at page 23-415 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 7-32-303, 7-32-4112, MCA

23.14.403 REQUIREMENTS FOR PEACE OFFICERS HIRED BEFORE AND AFTER THE EFFECTIVE DATE OF THIS REGULATION, found at page 23-415 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 7-32-303, 44-4-301, MCA

23.14.404 GENERAL REQUIREMENTS FOR CERTIFICATION, found at page 23-416 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, 44-11-301 through 44-11-305, MCA

23.14.405 REQUIREMENTS FOR THE BASIC CERTIFICATE, found at page 23-418 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 7-32-303, 44-4-301, 44-11-301 through 44-11-305, MCA

23.14.406 REQUIREMENTS FOR THE INTERMEDIATE CERTIFICATE, found at page 23-418.1 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.407 REQUIREMENTS FOR THE ADVANCED CERTIFICATE, found at page 23-419 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.408 REQUIREMENTS FOR THE SUPERVISORY CERTIFICATE, found at page 23-419 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.409 REQUIREMENTS FOR THE COMMAND CERTIFICATE, found at page 23-419.1 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.410 REQUIREMENTS FOR THE ADMINISTRATIVE CERTIFICATE, found at page 23-420 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

23.14.411 PURPOSE OF CERTIFICATES AND AWARDS, found at page 23-421 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

23.14.412 QUALIFICATIONS FOR CERTIFICATION OF LAW ENFORCEMENT ACADEMY AND TRAINING COURSES, found at page 23-421 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA

IMP: 7-32-303, 7-32-4112, MCA

23.14.413 CERTIFICATION REQUIREMENTS FOR TRAINEE ATTENDANCE AND PERFORMANCE, found at page 23-423.1 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA

IMP: 7-32-303, 7-32-4112, MCA

23.14.415 CODE OF ETHICS, found at page 23-425 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

23.14.416 THE BASIC COURSE, found at page 23-426 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

23.14.419 INSTRUCTOR CERTIFICATE REQUIREMENTS, found at page 23-427 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

23.14.420 REQUIREMENTS FOR DESIGNATED INCIDENT COMMAND CERTIFICATION, found at page 23-429 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

23.14.503 REFERENCED ADMINISTRATIVE RULES OF MONTANA

APPLY TO NON-SWORN OFFICERS, found at page 23-437 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.504 NOTICE OF APPOINTMENT OR TERMINATION OF NON-SWORN OFFICERS, found at page 23-437 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.510 MINIMUM QUALIFICATIONS FOR PUBLIC SAFETY COMMUNICATIONS OFFICERS, found at page 23-438 of the Administrative Rules of Montana.

AUTH: 7-31-202, MCA  
IMP: 7-31-201, 7-31-202, 10-4-101, MCA

23.14.511 REQUIREMENTS FOR PUBLIC SAFETY COMMUNICATIONS OFFICER BASIC CERTIFICATE, found at page 23-438 of the Administrative Rules of Montana.

AUTH: 7-31-203, MCA  
IMP: 7-31-201, 7-31-202, 7-31-203, 10-4-101, MCA

23.14.512 REQUIREMENTS FOR THE PUBLIC SAFETY COMMUNICATIONS OFFICER INTERMEDIATE CERTIFICATE, found at page 23-439 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 7-31-203, MCA

23.14.513 REQUIREMENTS FOR THE PUBLIC SAFETY COMMUNICATIONS OFFICER ADVANCED CERTIFICATE, found at page 23-439 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 7-31-203, MCA

23.14.514 REQUIREMENTS FOR THE PUBLIC SAFETY COMMUNICATIONS OFFICER SUPERVISORY CERTIFICATE, found at page 23-440 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 7-31-203, MCA

23.14.515 REQUIREMENTS FOR THE PUBLIC SAFETY COMMUNICATIONS OFFICER COMMAND CERTIFICATE, found at page 23-440 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 7-31-203, MCA

23.14.516 REQUIREMENTS FOR THE PUBLIC SAFETY COMMUNICATIONS OFFICER ADMINISTRATIVE CERTIFICATE, found at page 23-441 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 7-31-203, MCA

23.14.525 MINIMUM QUALIFICATIONS FOR DETENTION OFFICERS, found at page 23-442 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 7-32-303, 44-4-301, MCA

23.14.526 REQUIREMENTS FOR DETENTION OFFICER BASIC CERTIFICATE, found at page 23-443 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.527 REQUIREMENTS FOR THE DETENTION OFFICER INTERMEDIATE CERTIFICATE, found at page 23-443 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.528 REQUIREMENTS FOR THE DETENTION OFFICER ADVANCED CERTIFICATE, found at page 23-444 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.529 REQUIREMENTS FOR THE DETENTION OFFICER SUPERVISORY CERTIFICATE, found at page 23-444 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.530 REQUIREMENTS FOR THE DETENTION OFFICER COMMAND

CERTIFICATE, found at page 23-445 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.531 REQUIREMENTS FOR THE DETENTION OFFICER ADMINISTRATIVE CERTIFICATE, found at page 23-446 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.555 MINIMUM QUALIFICATIONS FOR PROBATION AND PAROLE OFFICERS, found at page 23-447 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 46-23-1003, MCA

23.14.556 REQUIREMENTS FOR PROBATION AND PAROLE OFFICER BASIC CERTIFICATE, found at page 23-447 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 46-23-1003, MCA

23.14.570 MINIMUM QUALIFICATIONS FOR JUVENILE PROBATION OFFICERS AND RECORD KEEPING, found at page 23-447 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 41-5-705, MCA

23.14.571 REQUIREMENTS FOR THE JUVENILE PROBATION OFFICER BASIC CERTIFICATE, found at page 23-448 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 41-5-702, MCA

23.14.572 MINIMUM QUALIFICATIONS FOR COMMERCIAL VEHICLE INSPECTORS, found at page 23-448 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 7-32-303, 44-4-301, 44-4-302, MCA

23.14.573 REQUIREMENTS FOR COMMERCIAL VEHICLE INSPECTOR BASIC CERTIFICATE, found at page 23-449 of the Administrative Rules of

Montana.

AUTH: 44-4-301, MCA  
IMP: 7-32-303, 44-4-301, 44-4-302, MCA

23.14.801 DEFINITIONS, found at page 23-457 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.802 GROUNDS FOR SUSPENSION OR REVOCATION OF MONTANA PEACE OFFICERS' STANDARDS AND TRAINING CERTIFICATION, found at page 23-459 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.803 PRELIMINARY PROCEDURE IN PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION, found at page 23-459.1 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.804 COMMENCEMENT OF FORMAL PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION, found at page 23-459.2 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.807 DECISION AND ORDER, found at page 23-459.4 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.808 RECORD OF PROCEEDINGS, found at page 23-459.4 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.901 CORONER EDUCATION AND CONTINUED EDUCATION AND EXTENSION OF TIME LIMIT FOR CONTINUED CERTIFICATION, found at page 23-461 of the Administrative Rules of Montana.

AUTH: 7-4-2905, MCA  
IMP: 7-4-2905, MCA

REASONABLE NECESSITY: The board is proposing to repeal Title 23, chapter 14, subchapters 4, 5, 8, and 9 because the Peace Officers Standards and Training Advisory Council responsibilities assigned to the board were transferred to a newly created and independent Montana Public Safety Officer Standards and Training Council under the provisions of SB 273 passed by the 2007 regular session of the Legislature and approved by the Governor. The Montana Public Safety Officer Standards and Training Council is responsible for adopting its own rules.

23.14.207 EXECUTIVE APPEAL, which can be found at page 23-406 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

REASONABLE NECESSITY: The board is proposing to repeal ARM 23.14.207 because the board derives final decision-making authority from state and federal law regarding grant applications.

23.15.105 PROPORTIONATE REDUCTION IN CLAIMS PAID, which can be found at page 23-470 of the Administrative Rules of Montana.

AUTH: 53-9-104, MCA  
IMP: 53-9-108, MCA

REASONABLE NECESSITY: The board is proposing to repeal ARM 23.15.105 because the Crime Victims Compensation Program was transferred to the Department of Justice, Office of the Attorney General, by the 2001 Legislature and is no longer operated or controlled by the board. Following this legislative change, rules were enacted to implement the legislation in 2002; however, ARM 23.15.105 was mistakenly left in as a duty assigned to the board.

4. The board proposes to adopt the following new rules:

NEW RULE I DEFINITIONS The following definitions apply to this subchapter:

- (1) "Board" is the Board of Crime Control.
- (2) "Committee" is the Appeal Review Committee of the Board of Crime Control.
- (3) "Council" is the Montana Public Safety Officer Standards and Training Council.
- (4) "Executive director" is the executive director of the Board of Crime Control.
- (5) "Hearing examiner" is a person appointed in accordance with 2-4-611,

MCA.

(6) "Parties" means the aggrieved party or the council.

AUTH: 44-4-301(2), 44-4-403(3), MCA

IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE II PURPOSE (1) These rules describe the appeal process from certification decisions of the council pursuant to 44-4-403(3), MCA.

AUTH: 44-4-301(2), 44-4-403(3), MCA

IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE III APPEAL REVIEW COMMITTEE (1) The board hereby establishes an appeal review committee as described in (2), for purposes of the initial review and recommendation to the board.

(2) There is an appeal review committee of the board, which consists of three members of the board, plus one alternate who is also a member of the board. Committee members and an alternate are appointed by the executive director for a term of two years. The executive director shall designate the committee chairperson.

(3) A board member designated as a member of the council, as provided in 44-4-402, MCA, may not participate in appeals brought to the board from decision of the council.

AUTH: 44-4-301(2), 44-4-403(3), MCA

IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE IV RIGHT TO APPEAL (1) Any party aggrieved by a decision of the council pursuant to 44-4-403, MCA, may seek review of the determination by the board, through its designated committee.

(2) The aggrieved party must seek review by filing a notice of appeal within ten working days after the day the final decision is mailed.

(3) The notice of appeal must include a statement of the party's intent to appeal the decision of the council, and must set forth the specific errors by the council, and the issues to be raised.

(4) The completed and signed notice of appeal shall be mailed to the council at 2260 Sierra Road East, Helena, Montana 59602, and to the executive director at 3075 North Montana Avenue, P.O. Box 201408, Helena, Montana 59620-1408.

(5) The notice of appeal must be postmarked no later than ten working days after the date the council's written decision was mailed.

(6) Failure to comply with the above requirements forfeits the right of appeal.

(7) A properly filed notice of appeal stays enforcement of the council's decision.

AUTH: 44-4-301(2), 44-4-403(3), MCA

IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE V RECORD OF PROCEEDINGS (1) The record of the decision by the council shall be provided to the executive director within 30 days after the notice of appeal is filed.

(2) Unless otherwise stipulated by the parties, the contents of the record shall be determined pursuant to 2-4-614, MCA.

(3) The parties may stipulate to submission of less than the entire record.

AUTH: 44-4-301(2), 44-4-403(3), MCA

IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE VI NOTICE OF REVIEW (1) Upon receipt of the record of proceedings, the committee shall give written notice of the date, time, and place of the review hearing to all interested parties.

(2) The review hearing, if possible, should occur not less than ten working days prior to the next regularly scheduled meeting of the board. If the review hearing cannot be included as part of the next regularly scheduled meeting of the board, the committee shall set another date, time, and place at its earliest convenience.

(3) At the request of a party, or upon its own motion, the board may, for good cause, continue the review.

AUTH: 44-4-301(2), 44-4-403(3), MCA

IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE VII COMMITTEE REVIEW PROCEDURE (1) The committee review is informal; however, any party may be represented by an attorney.

(2) The committee may hear argument concerning the findings of fact and conclusions of law of the hearing examiner or the council, if appropriate, or any alleged procedural defect in the proceedings below.

(3) Findings of fact must be supported by evidence in the record. Failure of the hearing examiner to make a finding on a critical fact may be corrected by the board's remand to the hearing examiner.

(4) Errors of law or procedural defects do not warrant reversal unless substantial rights are affected.

(5) The committee shall not consider any new evidence at the hearing unless good cause is shown for failing to produce it before the hearing examiner. If good cause is shown and the new evidence is to be allowed, the committee shall remand to the hearing examiner for consideration and a ruling.

(6) In its discretion, the committee may request briefs from the parties.

(7) The committee must keep a record of its proceedings substantially in compliance with the provisions of 2-4-614, MCA.

AUTH: 44-4-301(2), 44-4-403(3), MCA

IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE VIII RECOMMENDATION OF THE APPEAL REVIEW COMMITTEE (1) The committee must render a written recommendation suggesting

that the board either affirm the council's decision, reverse the council's decision, or remand to the hearing examiner for additional findings.

(2) A copy of the committee's recommendation shall be delivered or mailed to each party, as well as the executive director, who will then mail a copy of the recommendation to each noncommittee board member.

AUTH: 44-4-301(2), 44-4-403(3), MCA

IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE IX BOARD FINAL DECISION (1) The board shall, at its next regularly scheduled meeting, either adopt the committee's recommendation or send the recommendation back to the committee for further consideration.

(2) Once adopted by the board, the committee's recommendation becomes a final agency decision subject to judicial review.

(3) The board shall index all final decisions and make them available for public inspection.

AUTH: 44-4-301(2), 44-4-403(3), MCA

IMP: 44-4-301(2), 44-4-403(3), MCA

REASONABLE NECESSITY: Senate Bill 273 requires the board to adopt rules governing an appeal process for a person who has been denied certification or recertification, or whose certification or recertification has been suspended or revoked by the POST council as provided in 44-4-301(2) and 44-4-403(3), MCA.

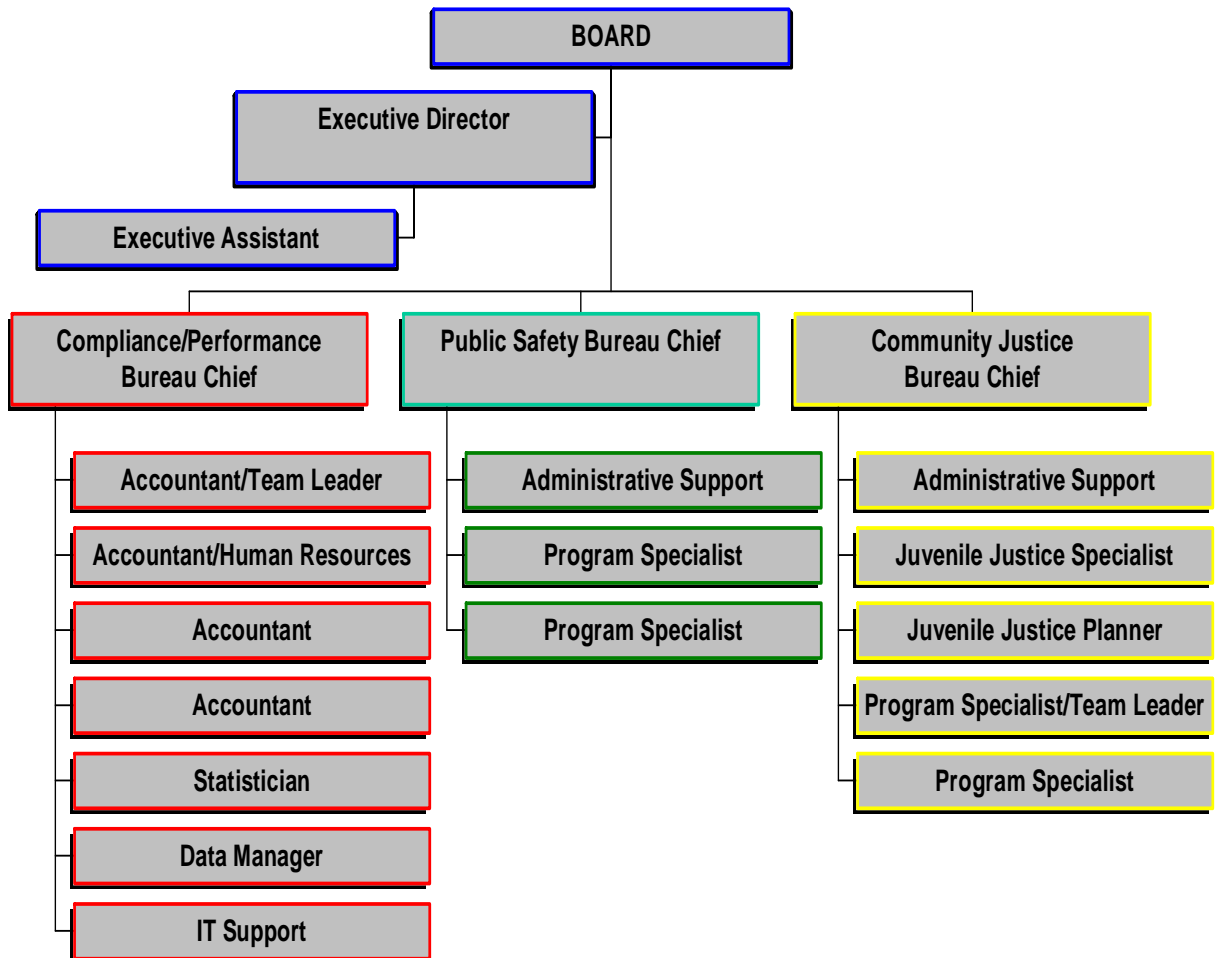
5. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

23.14.101 BOARD OF CRIME CONTROL FUNCTIONS (1) The board is comprised of members engaged in, affiliated with, or related to law enforcement, public safety, and criminal justice in the state of Montana.

~~(2) The statutes relating to the board are contained in 44-4-301, 2-15-2006, 15-25-122, 53-9-101, 7-32-303, MCA and Title 41, chapter 5, MCA (Youth Court Act).~~

(3) through (6) remain the same, but are renumbered (2) through (5).

## Montana Board of Crime Control



AUTH: 2-15-2006, 44-4-301, MCA  
IMP: 2-15-2006, 44-4-301, MCA

**REASONABLE NECESSITY:** The board is proposing the amendments because the original section (2) contains three statutes that have either been repealed or amended in a manner that no longer apply to the board. Section 15-25-122, MCA, was repealed in 1995, 53-9-101, MCA, was amended by the 2001 Regular Session to move the Crime Victims Compensation Act of Montana from the board to the Attorney General's Office, and 7-32-303, MCA, was amended in SB 273, section 12 of the 2007 Regular Legislative Session to reflect transfer of the POST functions of the board to the Public Safety Officer Standards and Training Council.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Claudia Martin, Board of Crime Control, 3075 North Montana Avenue, P.O. Box 201408, Helena, Montana 59620-1408; telephone (406) 444-3604; fax (406) 444-4722; or e-mail [clmartin@mt.gov](mailto:clmartin@mt.gov), and must be received no later than 5:00 p.m., May 22, 2008.

7. Ali Bovingdon, Assistant Attorney General, has been designated to preside over and conduct the hearing.

8. An electronic copy of this Notice of Public Hearing is available through the board's web site at <http://www.mbcc.mt.gov/>, under "New and Upcoming", entitled "Proposed Administrative Rule Changes," and through the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>. The board and department strive to make the electronic copies of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advise all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the board and department strive to keep their web sites accessible at all times, concerned persons should be aware that the web sites may be unavailable during some periods, due to system maintenance or technical problems.

9. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in (6) above, or faxed to the office at (406) 444-4722, or may be made by completing a request form at any rules hearing held by the board.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by letter dated February 14, 2008, sent postage prepaid by regular mail.

By	<u>/s/ Roland Mena</u>	<u>/s/ Ali Bovington</u>
	ROLAND MENA	ALI BOVINGDON
	Executive Director	Rule Reviewer
	Board of Crime Control	

Certified to Secretary of State April 14, 2008.